

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No.156 of 2003**

Smt. Maya Devi w/o Shri Motilal, aged about 37 yrs, Caste – Kanwar, R/o Vill. Narayanpur, Tah.-Ambikapur, Distt. Surguja (CG)

---- Appellant

Versus

1. Smt. Nanh Bai d/o Mandal, aged about 52 years,
2. Smt. Thakur Bai d/o Mandal, aged about 42 years,
3. Mukund Kanwar s/o Bhortu Kanwar, aged about 27 yrs.
All are resident of vill. Narayanpur, Tah. Ambikapur, District Surguja (CG)
4. State of Chhattisgarh Through Collector, Surguja, Ambikapur (CG)

---- Respondents

For Appellant	:	Mrs.Meena Shashtri, Advocate
For Respondent No.4	:	Mr.Vimlesh Bajpai, G.A.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

01/02/2019

1. This is the plaintiff's second appeal under Section 100 of the CPC by which the First Appellate Court has affirmed the judgment and decree of the trial Court dismissing the suit.
2. The plaintiff filed a suit for declaring the judgment and decree dated 13.7.94 passed in Civil Suit No.68-A/90 to be null and void and also for declaring her title over the suit land and for recovery of possession. The trial Court dismissed the suit holding that the plaintiff did not produce a copy of the judgment and decree 13.7.94 passed in Civil Suit No.68-A/90 and the plaintiff is not title-holder of the suit land, which has been upheld by the First Appellate Court, against which, this second appeal has been filed.
3. Learned counsel for the appellant/plaintiff would submit that the finding recorded by two Courts below is perverse and contrary to

record, which gives rise to substantial question of law for determination of this second appeal.

4. I have heard learned counsel for the appellant/plaintiff, perused the judgment and decree impugned and records of the Courts below with utmost circumspection.
5. Admittedly, the plaintiff did not produce a copy of the judgment and decree dated 13.7.94 passed in Civil Suit No.68-A/90 for declaring invalidity of which the suit was filed and according to the defendants by the said judgment and decree, daughter of Tuthi Bai, from which the plaintiff claimed title, has lost the title, as such, non-production of a copy of the judgment and decree dated 13.7.94 as stated above is fatal to the plaintiff. Both the Courts below have concurrently held against the plaintiff. Even otherwise, the plaintiff claimed title by Will (Ex.P/3), which has not been signed by Tuthi Bai, which is fatal to the plaintiff and in view of imperative provision contained in Section 63 (c) of the Indian Succession Act, unsigned Will by testator cannot be said to be Will and therefore, both the Courts below are justified in holding that Will by Tuthi Bai in favour of the plaintiff is not proved. The finding recorded by two Courts below is neither perverse nor contrary to record. I do not find any illegality or perversity in the said finding.
6. Accordingly, the second appeal being devoid of merit is liable to be and is hereby dismissed in *limine*, without notice to other side. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge